IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 401 OF 2005.
IN
FIRST APPEAL NO. 369 OF 2004.

Dattu Ganapati Mali (since deceased, through LRs.)
Smt.Indumati Dattu Mali & ors. ... Applicants.
Versus.
New India Assurance Co.Ltd. & ors. ... Respondents.

Shri V.M.Mali for the Applicant.

Shri M.G.Barve for Respondent no.1-Insurance Company.

Shri S.K.Chinchalikar for the Respondent No.2.

CORAM : ABHAY S.OKA, J.

DATED : 5th April, 2006.

P.C.:

1. Heard the learned Advocates appearing for the parties. It is not in dispute that the original claimant No.1 has been already permitted to withdraw 50% of the amount which is already deposited by the Respondent No.1-Insurance Company with the Tribunal subject to furnishing bank guarantee. I have heard the Advocates appearing for the parties. The learned Advocate appearing for Respondent No.2 in the civil Application has no objection if the Applicants in this Application are permitted to withdraw the remaining amount deposited by the Insurance Company as of today with the Tribunal.

2. In view of the consent of the Respondent No.2, prayer (a) in the application gets worked out. The second prayer is for directing the Appellant Insurance Company to deposit the balance decretal amount. Shri Barve appearing for the Insurance Company states that necessary amount will be deposited within a period of three weeks from today.

3. Hence the Civil Application is disposed by the following order:

i) The Applicants are permitted to withdraw 50% of the amount which is already deposited as of today by the Respondent No.1-Insurance Company with the Tribunal on furnishing bank guarantee of any nationalised bank. This will be in addition to withdrawal of remaining 50% of the amount which is already permitted to be withdrawn by the Claimant No.1.

ii) The Appellant in the first Appeal i.e. Respondent No.1 herein, New India Assurance Company Ltd. will deposit the balance decretal amount within a period of three weeks from today. If the said amount is not deposited, ad-interim stay granted on 18th March 2004 by this Court in

Civil Application No.859 of 2004 will stand vacated without further reference to the Court.

iii) If the balance decretal amount is deposited by the Appellant-New India Assurance Co.Ltd., the Tribunal will invest the same in fixed deposit in any nationalised bank initially for a period of three years and thereafter the fixed deposit will be renewed from year to year till disposal of the Appeal.

Judge.